

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KGGF-KUSN, Inc.)	File Number EB-02-KC-395
Licensee of Radio Stations:)	
KGGF(AM), KKRK(FM), and KUSN(FM); and)	NAL/Acct.No.200232560012
Owner of Antenna Structure Registrations:)	
#1033307,#1033308,#1033309,and #1033310)	FRN 0002-5340-55
Coffeyville, Kansas)	
Springfield, Missouri)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 28, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find that KGGF-KUSN, Inc., licensee of radio stations KGGF(AM), KKRK(FM), and KUSN(FM), and owner of antenna structure numbers 1033307, 1033308, 1033309, and 1033310, willfully and repeatedly violated Sections 11.35(a), 17.47(a)(1), 17.50 and 73.49 of the Commission's Rules ("Rules"),¹ by: failing to determine the cause of Emergency Alert System ("EAS") transmitting and monitoring failures; failing to inspect antenna structure lighting; failing to clean and repaint its four antenna structures as often as necessary to maintain good visibility; and failing to maintain an effective locked fence around its four antenna structures which have radio frequency potential at the base. We conclude that KGGF-KUSN, Inc. is apparently liable for a forfeiture in the amount of twenty three thousand dollars (\$23,000).

II. BACKGROUND

2. On May 1, 1998, an agent of the Commission's Kansas City Field Office ("Kansas City Office") inspected AM broadcast station KGGF, Coffeyville, Kansas, licensed to KGGF-KUSN, Inc., and the associated antenna structures owned by KGGF-KUSN, Inc. That inspection found faded paint on all four antenna structures associated with the KGGF directional operation. In addition, the station was not receiving EAS tests from one monitoring source.

3. On May 7, 1998, the Kansas City Office issued a Notice of Violation ("NOV") to KGGF-KUSN, Inc. for violations detected during the May 1, 1998 inspection of KGGF. The NOV specifically cited 47 C.F.R. §§ 11.17, 11.35(a), 73.1225(c), 73.1350(c), 73.1350(d), 73.1560(a) and 73.1870(c)(3).

¹ 47 C.F.R. §§ 11.35(a), 17.47(a)(1), 17.50 and 73.49.

4. On May 18, 1998, a reply was received to the NOV from KGGF-KUSN, Inc. President, John B. Mahaffey. In that reply, Mr. Mahaffey stated that station personnel were unaware that the station was required to receive two EAS weekly tests and that they would follow up with each of the monitoring sources if they do not receive a weekly EAS test to ascertain if a test was sent.

5. On May 28, 2002, agents from the Kansas City Office inspected co-owned and co-located stations KGGF(AM) and KKRK(FM), Coffeyville, Kansas, and KUSN(FM), Dearing, Kansas. All three stations are licensed to KGGF-KUSN, Inc. The agents also inspected KGGF-KUSN, Inc.'s antenna structures associated with radio station KGGF. The inspection was conducted with the station manager, Mr. John Leonard. This inspection revealed the following violations:

a. KGGF-KUSN, Inc.'s EAS equipment is shared by all three of its co-located radio stations.² KGGF-KUSN, Inc. failed to receive and initiate required EAS tests and failed to determine and log the causes for these failures. No required weekly EAS tests ("RWT") had been received from the primary monitoring source WIBW during the period April 25, 2002 through May 28, 2002. Also, no RWTs and no required monthly tests ("RMT") had been received from KIND-FM according to the station logs. In addition, none of the three stations had initiated an RWT during the period of March 1, 2002 until May 28, 2002 when the FCC inspection began. No logs documented the reasons why tests were not being received or sent.

b. None of the four towers associated with the KGGF(AM) directional operation had effective fencing. Most of the previous fence was laying on the ground or missing entirely. The manager had contracted with one fencing contractor some time after a major storm hit the area on May 9, 2002, and obtained an estimate for the fencing repairs dated May 16, 2002. The dilapidated condition of the fencing observed during the inspection and statements made by the stations' contract engineer indicated that the tower fencing had been in a state of disrepair for some time prior to the May 9, 2002 storm. At the time of inspection, no repairs had been started and no other contractor had been contacted in an effort to get the repairs completed at an earlier date.

c. All four towers owned by, and registered to, KGGF-KUSN, Inc. under registration numbers 1033307, 1033308, 1033309 and 1033310, required painting. All four towers had severely faded paint and rust clearly shown in the white bands. After the inspection station management asked the contract engineer to begin soliciting for bids to have the towers repainted.

² See 47 C.F.R. §§ 11.51(j) and 11.52(c).

d. Three of the four towers did not have operational lighting. Only tower #1 (1033307) had working lights. Further investigation found that KGGF-KUSN, Inc. relied on remote indications to determine the lighting status of all four towers. However, the remote indications provided on-off status only, with no means of monitoring individual light status. The station contract engineer stated that he had previously notified the licensee that the remote system did not provide sufficient indications and that visual inspections were necessary to maintain compliance. The most recent visual inspection of the structure lighting was made on May 8, 2002 (20 days prior to inspection) by the chief operator, Kevin Jones, who reported that, at that time, the lighting for all towers was fully operational. KGGF-KUSN, Inc. personnel did not know when the lighting for towers #2, 3 and 4 became inoperable. The agents observed that towers #2 and #3 had steady burning top lights instead of flashing beacons, as required by the registrations for those structures. The towers were lighted in accordance with the KGGF station authorization and not the tower registrations. The licensee was not conducting quarterly tower inspections and it was unknown when the tower lighting systems had been inspected.

III. DISCUSSION

6. Section 11.35(a) states that broadcast stations are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, broadcast stations must determine the cause of any failure to receive the required tests or activations specified in §§ 11.61(a)(1) and (2). Appropriate entries must be made in the broadcast station log indicating reasons why any tests were not received. KGGF-KUSN, Inc. stated it had problems receiving EAS activations at the time of inspection on May 1, 1998. Four years later, the station continued to fail to receive RWTs and RMTs. The station was not initiating RWTs as required during the three month period of March 1, 2002 through May 28, 2002 to ensure their encoder was in operational condition until after the FCC arrived to conduct an inspection. The station failed to log any reasons why tests were not being received. The EAS violations were noted at all three stations.

7. Section 17.50 states that antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. KGGF-KUSN, Inc. had not taken any steps to have the tower painting cleaned or repainted as required. The station manager for KGGF was notified of the faded condition of the tower paint during the inspection on May 1, 1998. No efforts appear to have been made to have the towers painted since that date. The inspection of May 28, 2002 found all four towers to have severely faded paint and rust showing in the white bands resulting in the blurring of the white and orange paint bands on all towers and greatly reducing the visibility of all four towers. All four towers are owned by KGGF-KUSN, Inc. and are required to be painted by both the Federal Aviation Administration and the FCC.

8. Section 17.47(a)(1) states that the owner of any antenna structure shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly. On May 28, 2002, the most recent visual inspection made by station personnel was 20 days prior on May 8, 2002, in which the lights were reported to be fully operational. On May 28, 2002, three of the four antenna structures were without any operational lighting and no station personnel was aware of the inoperable status of the lighting. KGGF-KUSN, Inc. relied on remote readings that did not provide the indications of lighting malfunctions necessary to maintain compliance. KGGF-KUSN, Inc. was not conducting any lighting system inspections and it was unknown when the last inspection had been conducted of the lighting system.

9. Section 73.49 states that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. At the time of inspection on May 28, 2002, KGGF-KUSN, Inc. did not have effective locked fencing around any of the four towers associated with the KGGF operation. The condition of the fencing and statements by KGGF-KUSN, Inc. personnel indicated the fencing had been ineffective for some time. Some time after May 9, 2002, station management obtained one estimate from one fencing company, but that company advised KGGF-KUSN, Inc. that they were busy and could not guarantee when the repairs could be scheduled. At the time of inspection on May 28, 2002, no repairs had been started and no completion date had been established. KGGF-KUSN, Inc. had not attempted to contact any other fencing contractors and no temporary efforts had been made.

10. Based on the evidence before us, we find that KGGF-KUSN, Inc. willfully³ and repeatedly⁴ violated Sections 11.35(a), 17.47(a)(1), 17.50 and 73.49 of the Rules by: failing to determine the causes, and logging such causes, of continuing failures to send and receive EAS tests; failing to conduct required monitoring of the tower lighting and lighting systems associated with the four towers utilized by station KGGF; failing to clean and repaint the paint on the four KGGF towers; and failing to maintain an effective locked fence around the four KGGF towers with RF potential at their base. .

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

11. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amounts for the violation(s) cited in this notice are: \$10,000 for failure to clean and repaint the towers, \$7,000 for failure to maintain effective locked fencing, \$2,000 for failure to conduct required monitoring of the lighting and lighting system, and \$2,000 for failure to determine and log the cause of any failure to send and receive a required EAS test (failure to conduct required monitoring).⁵ Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁶ Regarding the EAS violation, this is a repeat violation that involves all three of KGGF-KUSN, Inc.'s stations, therefore, an upwards adjustment of the forfeiture associated with this violation from \$2,000 to \$4,000 is appropriate. Considering the entire record and applying the statutory factors listed above, this case warrants a \$23,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ KGGF-KUSN, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty three thousand dollars (\$23,000) for willful and repeated violation of Sections 11.35(a), 17.47(a)(1), 17.50 and 73.49 of the Rules.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability*, KGGF-KUSN, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503 (b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this *Notice of Apparent Liability* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

18. IT IS FURTHER ORDERED THAT a copy of this *Notice of Apparent Liability* shall be sent by regular mail and Certified Mail Return Receipt Requested to KGGF-KUSN, Inc. at P.O. Box 4584, Springfield, MO 65808-4584.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director, Kansas City Office
Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.